

IN THE UNITED STATES DISTRICT COURT RECEIVED CLERK'S OFFICE
FOR THE DISTRICT OF SOUTH CAROLINA

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George Holmes, #289114,)
Plaintiff,)
v.)
Inv. J. Fraser, BCSO,)
Defendants.)

)

DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON, SC

Civil Action No. 9:11-735-SB

ORDER

This matter is before the Court upon the Plaintiff's pro se complaint, filed pursuant to 42 U.S.C. § 1983. In his complaint, the Plaintiff complains that he was convicted pursuant to evidence obtained without a search warrant, and he asks that the Court ensure that his application for post-conviction relief be granted.


The record contains a report and recommendation ("R&R") of a United States Magistrate Judge, which was made in accordance with 28 U.S.C. § 636(b)(1) and the Local Civil Rules for this District. In the R&R, the Magistrate Judge recommends that the Court summarily dismiss the Plaintiff's complaint without prejudice based on the fact that federal habeas relief is not available at this time and because federal courts should not interfere with ongoing state proceedings absent extraordinary circumstances, which do not appear to be present here. Moreover, the Magistrate Judge concluded that a writ of mandamus is not warranted, to the extent that the Plaintiff asks this Court to direct a particular finding in his state case.

The Plaintiff filed objections to the R&R and a motion to appoint counsel. In his objections, the Plaintiff states that he disagrees with his complaint being dismissed, and he reiterates his claim that the officers violated his constitutional rights by failing to obtain

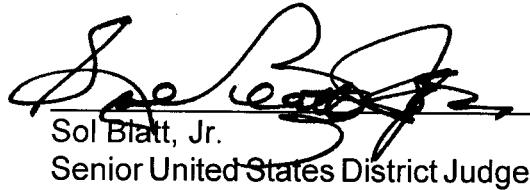
a search warrant. He states that he has a winning case and asks that the Court appoint counsel to represent him.

This Court is charged with conducting a de novo review of any portion of the R&R to which a specific objection is registered and may accept, reject or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636 (b)(1). Any written objection must specifically identify the portions of the R&R to which objections are made and the basis for those objections. Id.

After a review of the entire record, the R&R, and the Plaintiff's objections, the Court finds that the Magistrate Judge fairly and accurately summarized the facts and applied the correct principles of the law. Moreover, the Court finds that the Plaintiff's objections are wholly without merit. Here, as the Magistrate Judge determined, the Plaintiff must proceed with his state court post-conviction relief application before applying for habeas corpus relief. Also, to the extent that the Plaintiff seeks to recover for allegedly unconstitutional actions taken against him in the context of his state criminal case, he must first show that his state criminal conviction has been set aside, vacated, or otherwise invalidated. Because the Plaintiff has not exhausted his state court remedies; because he has not shown that his state conviction has been set aside; and because he has not shown that the extraordinary writ of mandamus is warranted, it is hereby

ORDERED that the R&R (Entry 8) is adopted and incorporated herein; the Plaintiff's objections (Entry 11) are overruled; the Plaintiff's motion to appoint counsel (Entry 12) is denied; and this matter is dismissed without prejudice and without issuance and service of process for failure to state a claim upon which relief may be granted.

AND IT IS SO ORDERED.



Sol Blatt, Jr.
Senior United States District Judge



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